

United States District Court
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

| | |
|--|----------------------------|
| ALEXSAM, INC. | |
| v. | |
| BARNES & NOBLE, INC. AND BARNES & NOBLE MARKETING SERVICES, LLC | Cause No. 2:13-cv-3 |
| THE GAP INC. AND DIRECT CONSUMER SERVICES, LLC | Cause No. 2:13-cv-4 |
| J.C. PENNEY COMPANY, INC. AND J.C. PENNEY CORPORATION | Cause No. 2:13-cv-5 |
| MCDONALD'S CORPORATION AND P2W, INC. NFP | Cause No. 2:13-cv-6 |
| TOYS "R" US—DELAWARE, INC. AND TRU-SVC, LLC | Cause No. 2:13-cv-7 |
| THE HOME DEPOT, U.S.A., INC. AND HOME DEPOT INCENTIVES, INC. | Cause No. 2:13-cv-8 |

ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATE MAGISTRATE JUDGE

The above-entitled and numbered civil actions were heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such actions has been presented for consideration. Alexsam, Inc. filed objections to the Magistrate Judge's Report and Recommendation regarding Alexsam's motion for partial summary judgment that the MobilGO system is not anticipatory prior art or evidence of conception of the Kmart system. Defendants filed a response to Alexsam's objections.

The Court conducted a *de novo* review of the Magistrate Judge's findings and conclusions. Alexsam's objections are without merit. The Court is of the opinion that the

findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court.¹

Based on the foregoing, it is hereby **ORDERED** that Alexsam's Objections to the Court's Report and Recommendation Regarding Alexsam's Motion for Partial Summary Judgment that the MobilGO System is Not Anticipatory Prior Art or Evidence of Conception of the Kmart System (2:13-cv-3, Doc. No. 103); (2:13-cv-4, Doc. No. 104); (2:13-cv-5, Doc. No. 97); (2:13-cv-6, Doc. No. 100); (2:13-cv-7, Doc. No. 100); (2:13-cv-8, Doc. No. 98) are **OVERRULED**.

It is further **ORDERED** that Alexsam's Motion for Partial Summary Judgment that the MobilGO system is not Anticipatory Prior Art or Evidence of Conception of the Kmart System (2:13-cv-3, Doc. No. 23); (2:13-cv-4, Doc. No. 24); (2:13-cv-5, Doc. No. 25); (2:13-cv-6, Doc. No. 25); (2:13-cv-7, Doc. No. 25); (2:13-cv-8, Doc. No. 25) is **DENIED**.

It is SO ORDERED.

SIGNED this 26th day of April, 2013.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE

¹ With regard to one of Alexsam's "objections," the sentence contained in a parenthetical on pages 17-18 of the Report and Recommendation clearly reflects the contentions of Defendants and/or their expert rather than a reflection of the Court's position on Alexsam's infringement contentions.